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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO/OAKLAND DIVISION**

LETICIA ZAMORA and DANIEL  
PEREZ and ELIZABETH PEREZ,

Plaintiffs,

v.

WACHOVIA CORPORATION and  
WORLD SAVINGS BANK,

Defendants.

No. 3:07-CV-4603

CLASS ACTION

**FIRST AMENDED CLASS  
ACTION COMPLAINT  
FOR:**

- 1. Violations of the Equal Credit  
Opportunity Act;**
- 2. Violations of the Fair Housing Act;**
- 3. Violations of the Civil Rights Act,  
42 U.S.C. §1981; and**
- 4. Violations of the Civil Rights Act,  
42 U.S.C. §1982**

**DEMAND FOR JURY TRIAL**

1           1.     Plaintiffs LETICIA ZAMORA (“Zamora”), DANIEL PEREZ and  
2     ELIZABETH PEREZ (“Perez”) (together, “Plaintiffs”), by and through their  
3     attorneys, bring this action against Wachovia Corporation and its wholly-owned  
4     subsidiary, World Savings Bank (together, “WACHOVIA” or “Defendant”)  
5     seeking redress for racially discriminatory lending practices under the Equal Credit  
6     Opportunity Act, 15 U.S.C. § 1691, et seq. (“ECOA”), the Fair Housing Act, 42  
7     U.S.C. § 3601 et seq (“FHA”), and the Civil Rights Act, 42 U.S.C. §§ 1981 and  
8     1982, on behalf of themselves and all others similarly situated.

### 9                                   INTRODUCTION

10           2.     This class action challenges Defendant WACHOVIA’s racially  
11     discriminatory mortgage lending practices. Defendant WACHOVIA has, directly  
12     and through the operations of its subsidiary World Savings Bank, engaged in both  
13     intentional and disparate impact discrimination through its development and  
14     implementation of mortgage pricing policies and procedures that provide financial  
15     incentives to its authorized loan officers, mortgage brokers and correspondent  
16     lenders to make subjective decisions to increase interest rates and charge additional  
17     fees and costs to minority borrowers.

18           3.     Defendant WACHOVIA’s authorized loan officers, mortgage brokers  
19     and correspondent lenders are given discretion – and actually encouraged and  
20     incentivized – to increase interest rates and charge additional fees to certain  
21     borrowers. These policies directly lead to minorities receiving home loans with  
22     higher interest rates and higher fees and costs than similarly situated non-minority  
23     borrowers.

24           4.     As used in this Complaint, “minority” or “minorities” shall refer to all  
25     non-Caucasians and other minority racial groups protected under 42 U.S.C. §§  
26     1981, 1982, and 3604, and 15 U.S.C. § 1691.

27           5.     Plaintiffs bring this action on behalf of all minorities (hereinafter  
28     collectively referred to as the “Class” or “members of the Class”) who have entered

1 into residential mortgage loan contracts that were financed or purchased by  
2 WACHOVIA, and who have been subjected to racial discrimination.

3 6. Plaintiffs seek injunctive, declaratory, and equitable relief, punitive  
4 damages, and other monetary and non-monetary remedies for WACHOVIA's  
5 racially discriminatory conduct.

6 **JURISDICTION AND VENUE**

7 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives  
8 this Court original jurisdiction over civil actions arising under federal law.

9 8. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because a  
10 substantial part of the events giving rise to Plaintiffs' and the Class's claims  
11 occurred in this District. In particular, Zamora resides in this District and World  
12 Savings Bank financed Zamora's purchase of property located in this District out of  
13 its offices located in this District.

14 **PARTIES**

15 9. Plaintiff Zamora is a Latino homeowner who resides at 1165 Orchid  
16 Street, Livermore, CA 94551.

17 10. Plaintiffs Perez are Latino homeowners who reside in Laween,  
18 Arizona.

19 11. Defendant Wachovia Corporation is a diversified financial services  
20 company headquartered in Charlotte, North Carolina. Wachovia Corporation and  
21 its subsidiaries conduct business and maintain branches throughout the United  
22 States, including in this judicial district and elsewhere in California.

23 12. Wachovia Corporation merged with Golden West Financial Services in  
24 2006. World Savings Bank, a federal savings bank which entered into the relevant  
25 lending transactions with the plaintiffs, was at the time of the merger a subsidiary of  
26 Golden West with offices throughout the United States including California.  
27 Following the merger, World Savings became a subsidiary of Wachovia  
28 Corporation. Defendants have informed consumers that they are in the process of

1 wholly integrating their banking services, and that no changes will result to the  
2 terms or conditions of any outstanding loans. *See, e.g.,*  
3 [http://wachovia.com/inside/page/0,,131\\_10466\\_10469,00.html#numbers](http://wachovia.com/inside/page/0,,131_10466_10469,00.html#numbers) (last  
4 visited August 30, 2007). On information and belief, as a result of the merger  
5 Wachovia Corporation assumed all rights, obligations and liabilities arising out of  
6 and related to loans made by World Savings Bank, including the loans made to the  
7 Plaintiffs herein.

## 8 **FACTS**

### 9 **I. HISTORICAL DISCRIMINATION IN AMERICAN MORTGAGE** 10 **LENDING**

11 13. Racial discrimination in America's mortgage lending industry has a  
12 long legacy. As this Complaint attests, that unfortunate history continues to this  
13 day due to discriminatory treatment of minority borrowers by mortgage banks such  
14 as WACHOVIA.

15 14. The Joint Center for Housing Studies at Harvard University conducted  
16 a study in 2005 called "The Dual Mortgage Market: The Persistence of  
17 Discrimination in Mortgage Lending," which summarizes that history well. It  
18 states that "[i]n the immediate post-World War II period, racial discrimination in  
19 mortgage lending was easy to spot. From government-sponsored racial covenants in  
20 the Federal Housing Administration (FHA) guidelines to the redlining practices of  
21 private mortgage lenders and financial institutions, minorities were denied access to  
22 home mortgages in ways that severely limited their ability to purchase a home.  
23 Today, mortgage lending discrimination is more subtle. . . . [M]ore than three  
24 decades after the enactment of national fair lending legislation, minority consumers  
25 continue to have less-than-equal access to loans at the best prices and on the best  
26 terms that their credit history, income, and other individual financial considerations  
27 merit."  
28

1           15. The federal Home Mortgage Disclosure Act (“HMDA”) requires  
2 mortgage lenders to report information about the home loans they process each  
3 year. In 2005, lenders reported information on more than 30 million home loan  
4 applications pursuant to HMDA. In 1989, Congress required lenders to begin  
5 disclosing information about mortgage borrowers’ race and ethnicity. In 2004,  
6 concerned with potential racial discrimination in loan pricing, and recognizing that  
7 racial or other types of discrimination can occur when loan officers and mortgage  
8 brokers have latitude in setting interest rates, the Federal Reserve Board began  
9 requiring lenders to also report information concerning rates, points, and fees,  
10 charged to borrowers on high-cost loans.

11           16. HMDA data for 2004 reveals profound loan pricing disparities  
12 between Hispanic borrowers and non-Hispanic whites even after controlling for  
13 borrowers’ gender, income, property location, and loan amount. After accounting  
14 for those differences in the 2004 HMDA data, Hispanic borrowers were still almost  
15 twice as likely to receive a higher-rate home loan as non-Hispanic whites.  
16 (<http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf> (last viewed  
17 August 14, 2007).) In a speech last year, the Vice-Chairman of the Federal Deposit  
18 Insurance Corporation, Martin Gruenberg, discussed the 2004 HMDA data and  
19 observed that that data “clearly indicated” that Hispanics are more likely to receive  
20 high-cost home loans than are non-Hispanic whites.  
21 (<http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html>  
22 (last viewed August 15, 2007).)

23           17. Likewise, HMDA data for 2005 shows that “for conventional home-  
24 purchase loans, the gross mean incidence of higher-priced lending was 54.7 percent  
25 for blacks and 17.2 percent for non-Hispanic whites, a difference of 37.5 percentage  
26 points.” *Id.* at A159. The situation is similar for refinancings, where there is a  
27 difference of 28.3 percentage points between blacks and non-Hispanic whites.  
28 Avery, Brevoort, and Canner, Federal Reserve Bulletin, A124, A159.

1           18. The Association of Community Organizations for Reform Now  
2 (ACORN) released a report entitled “The High Cost of Credit: Disparities in High-  
3 priced Refinanced Loans to Minority Homeowners in 125 American Cities,” dated  
4 September 27, 2005, which found that “[i]n every metropolitan area where at least  
5 50 refinances were made to African-American homeowners, African-Americans  
6 were more likely to receive a high-cost loan than White homeowners.”

7           19. Defendant WACHOVIA’s lending practices are of a piece with the  
8 foregoing history.

9       **II. PAST AS PROLOGUE: DEFENDANT WACHOVIA’S**  
10       **DISCRIMINATORY LENDING POLICIES**

11       **A. DEFENDANT WACHOVIA’S RELATIONSHIPS WITH ITS**  
12       **MORTGAGE BROKERS AND CORRESPONDENT LENDERS**

13           20. Defendant WACHOVIA originates and funds mortgage loans through  
14 loan officers, brokers and through a network of correspondent lenders.

15           21. On information and belief, the loan officers, mortgage brokers and  
16 correspondent lenders that work with Defendant WACHOVIA broker and fund  
17 loans in collaboration with Defendant WACHOVIA, and in conformance with  
18 Defendant WACHOVIA’s credit-pricing policies and procedures.

19           22. Defendant WACHOVIA has followed – and continues to follow –  
20 discretionary loan pricing procedures that cause minority borrowers to pay  
21 subjective fees such as yield spread premiums and other mortgage-related finance  
22 charges at higher rates than similarly situated non-minority borrowers. Defendant  
23 WACHOVIA has intentionally discriminated against Plaintiff and Class Members  
24 through these policies and procedures – systematically giving them mortgage loans  
25 with less favorable conditions than were given to similarly situated non-minority  
26 borrowers. This pattern of discrimination is not the result of random or non-  
27 discriminatory factors. Rather, it is a direct result of Defendant WACHOVIA’s  
28 mortgage lending policies and procedures.



1           23. On information and belief, Defendant WACHOVIA's authorized loan  
2 officers, mortgage brokers and correspondent lenders receive part or all of their  
3 compensation from Defendant WACHOVIA based on the interest rate charged to  
4 the borrower. Defendant WACHOVIA's in-house loan officers, authorized brokers  
5 and correspondent lenders receive more compensation from Defendant  
6 WACHOVIA when they steer their clients into WACHOVIA loans with higher  
7 interest rates, and less compensation when they place their clients into  
8 WACHOVIA loans with lower interest rates.

9           24. Defendant WACHOVIA intentionally and actively implements this  
10 discriminatory credit-pricing policy in a number of ways, including actively  
11 educating its loan officers and brokers about WACHOVIA's credit policies and  
12 procedures, and directing its loan officers and brokers regarding the marketing of  
13 WACHOVIA loan products. WACHOVIA's "interactive, secure Web site,"  
14 INSITE, provides forms, rate calculations, and other tools for its brokers to use in  
15 marketing and arranging WACHOVIA loans to potential customers.  
16 [www.wachovia.com/corp\\_inst/page/0,,7\\_21\\_226\\_786,00.html](http://www.wachovia.com/corp_inst/page/0,,7_21_226_786,00.html) (last viewed August  
17 20, 2007).

18           25. These credit-pricing policies and procedures permit Defendant  
19 WACHOVIA's authorized loan officers, mortgage brokers and correspondent  
20 lenders subjectively to charge certain loan applicants yield spread premiums and  
21 other discretionary charges, including minority loan applicants.

22           26. This pattern of discrimination cannot be justified by business  
23 necessity, and could be avoided through the use of alternative policies and  
24 procedures that have less discriminatory impact and no less business efficacy.

25 ///

26 ///

27 ///

28 ///

**B. DEFENDANT WACHOVIA'S DISCRETIONARY CREDIT PRICING SYSTEM: DESIGNED TO DISCRIMINATE**

27. Defendant WACHOVIA discriminates through its authorized mortgage brokers. Authorized mortgage brokers act as Defendant WACHOVIA's agents in originating mortgage loans. Authorized mortgage brokers enter into agreements with Defendant WACHOVIA to accept loan applications on behalf of Defendant WACHOVIA; communicate to loan applicants financing terms and rates set by Defendant WACHOVIA; tell loan applicants about Defendant WACHOVIA's various financing options; and ultimately originate mortgage loans funded by Defendant WACHOVIA using Defendant WACHOVIA's forms and in accordance with Defendant WACHOVIA's policies and procedures.

28. Likewise with Defendant WACHOVIA's authorized correspondent lenders and loan officers, who also act as Defendant WACHOVIA's agents in originating loans. Correspondent mortgage lenders and loan officers that work with Defendant WACHOVIA make loans in accordance with Defendant WACHOVIA's credit policies and procedures. Defendant WACHOVIA funds correspondent-generated loans before or shortly after they go to closing.

29. Defendant WACHOVIA, then, funds loans originated by its loan officers, authorized mortgage brokers and correspondent lenders, sets the terms and conditions of credit on those loans, and shoulders part or all of the risk on such loans. Defendant WACHOVIA actively and intentionally enforces its credit policies through its authorized loan officers, mortgage brokers and correspondent lenders in a variety of ways. Among other things, Defendant WACHOVIA supplies its loan officers, correspondent lenders and mortgage brokers with an array of loan-related forms and agreements, including loan contracts, loan applications, and instructions on completing loan applications and contracts. And, as noted above, WACHOVIA actively trains its authorized brokers to follow WACHOVIA's policies and procedures, and reinforces that training with marketing support.



1           30. Once a loan applicant has provided credit information to Defendant  
2 WACHOVIA through a loan officer, mortgage broker or correspondent lender,  
3 Defendant WACHOVIA performs an initial objective credit analysis. At that point,  
4 Defendant WACHOVIA evaluates numerous risk-related credit variables, including  
5 debt-to-income ratios, loan-to-value ratios, credit bureau histories, debt ratios,  
6 bankruptcies, automobile repossessions, prior foreclosures, payment histories,  
7 credit scores, and the like.

8           31. Defendant WACHOVIA derives a risk-based financing rate from these  
9 objective factors, which Defendant WACHOVIA and others in the mortgage  
10 industry simply call the “par rate.” (Defendant WACHOVIA’s brokers and  
11 correspondent lenders can also estimate the par rates by referring to an applicant’s  
12 credit bureau-determined credit score.)

13           32. Although Defendant WACHOVIA’s initial analysis applies objective  
14 criteria to calculate this risk-related interest rate, Defendant WACHOVIA as a  
15 matter of policy and procedure authorizes its loan officers, brokers and  
16 correspondent lenders to mark up that rate later, and also impose additional non-  
17 risk-based charges including yield spread premiums, and other discretionary fees.  
18 Defendant WACHOVIA regularly communicates applicable par rates, authorized  
19 yield spread premiums, and other discretionary fees to its loan officers, brokers and  
20 correspondent lenders via “rate sheets” and other communications.

21           33. Defendant WACHOVIA gives its loan officers, authorized mortgage  
22 brokers and correspondent lenders discretion to impose yield spread premiums and  
23 other subjective fees on borrowers. When borrowers pay yield spread premiums,  
24 Defendant WACHOVIA shares in additional income generated by the premium  
25 because the yield spread premium-affected borrower is locked into a higher interest  
26 rate going forward on their WACHOVIA loan than they would be if they had been  
27 placed in a par rate loan without a yield spread premium.  
28

1           34. Defendant WACHOVIA's borrowers pay yield spread premiums and  
2 other discretionary fees that inflate their finance charges not knowing that a portion  
3 of their finance charges are non-risk-related.

4           35. Defendant WACHOVIA's policies and procedures concerning the  
5 assessment of yield spread premiums and other discretionary fees cause persons  
6 with identical or similar credit scores to pay differing amounts for obtaining credit.  
7 Such subjective loan pricing - which by design imposes differing finance charges  
8 on persons with the same or similar credit profiles - disparately impacts Defendant  
9 WACHOVIA's minority borrowers.

10          36. While Defendant WACHOVIA's use of a common credit policy for all  
11 loan applicants might appear to be racially neutral, Defendant WACHOVIA's use  
12 of yield spread premiums and other discretionary fees disproportionately and  
13 adversely affects minorities (relative to similarly situated non-minorities).  
14 Defendant WACHOVIA's credit policy causes minorities to pay disparately more  
15 discretionary finance charges than similarly situated non-minorities. As the HMDA  
16 data cited herein indicates, minorities are substantially more likely than similarly  
17 situated non-minorities to pay such charges.

18          37. Defendant WACHOVIA's credit policy is in fact intentionally  
19 discriminatory. As described above, Defendant WACHOVIA's credit pricing  
20 policy by design discriminates against minority borrowers and directly causes this  
21 disparate impact.

22 **III. DEFENDANT WACHOVIA IMPOSED DISCRIMINATORY FEES ON**  
23 **PLAINTIFFS**

24          38. Defendant WACHOVIA's discriminatory credit pricing policy directly  
25 damaged Plaintiffs.

26 **Facts relating to Zamora:**

27          39. In July, 2005, plaintiff Leticia Zamora refinanced her home located at  
28 1165 Orchid St., Livermore, CA. She engaged the services of mortgage broker

1 Carlos Alfaro of Allfund Mortgage, who solicited her and her husband, Javier  
2 Zamora, at their home, to assist them with the transaction. World Savings Bank  
3 was the lender on the Zamoras' original loan and also on the refinance.

4 40. Zamora purchased a 30-year, adjustable-rate mortgage loan in the  
5 principal amount of \$470,000 with an initial interest rate of 6.142% (an APR of  
6 6.253%). In connection with this transaction, Zamora was required to pay  
7 Universal Home Loans a "mortgage broker fee" of \$5,450.00 paid out of the  
8 proceeds of the loan, *and* a "broker fee" of \$9,400.00 which was paid outside of  
9 closing (POC). Zamora also paid several hundred dollars in loan processing fees to  
10 World Savings. On information and belief, the broker fees were assessed pursuant  
11 to Defendant WACHOVIA's standard credit pricing policies.

12 41. The Zamoras are primarily Spanish-speaking, and WACHOVIA knew  
13 that they were minority borrowers. Among other things, Mr. Alfaro had told them  
14 that he was a Christian who was trying to help Latinos get better loans.

15 **Facts relating to Perez:**

16 42. In March-April 2007, plaintiffs Daniel and Elizabeth Perez, husband  
17 and wife, refinanced their residence located at 11926 S. 38<sup>th</sup> Ave., Laween, Arizona  
18 85339. Approximately \$339,000 of the proceeds were used to pay off Perez's prior  
19 mortgage with M&I Marshall & Ilsley Bank, and \$83,000 was used to satisfy other  
20 debts. They engaged the services of a mortgage broker, Spectrum Financial, to  
21 assist them with the transaction. World Savings Bank refinanced and funded the  
22 loan.

23 43. Perez purchased a loan in the principal amount of \$423,750. In  
24 addition to hundreds of dollars in "redrawing" and processing fees paid to World  
25 Savings, Perez was charged a \$998.00 "mortgage broker fee" which was paid to  
26 Spectrum Financial out of the proceeds of the loan, and a "broker fee" of \$8,475.00  
27 – 2% of the proceeds – which paid out of closing.  
28

1           44. Mr. and Mrs. Perez also refinanced a second loan secured by their  
2 property located at 3841 E. Calle Poco, Laween, AZ 85339. Of the \$343,000  
3 principal amount of this loan, approximately \$175,000 was to pay off the Perez's  
4 prior loan with National Bank of Arizona. In connection with this transaction,  
5 Perez was required to pay a \$3,430.00 "loan origination fee," a \$498 "processing  
6 fee," and a \$75 "broker application fee" to Core Mortgage LLC. The HUD-1  
7 Settlement Statement associated with the transaction states that the lender also paid  
8 a \$2,572.50 "yield spread" premium to Core Mortgage outside of the closing.

9           45. Mr. and Mrs. Perez are primarily Spanish-speaking, and WACHOVIA  
10 knew that they were minority borrowers.

11           46. As a result of Defendant WACHOVIA's discriminatory conduct,  
12 Plaintiffs received loans on worse terms with higher costs than similarly situated  
13 non-minority borrowers.

14                           **CLASS ACTION ALLEGATIONS**

15           47. Plaintiffs repeat and re-allege each allegation above as if set forth  
16 herein in full.

17           48. This class action is brought pursuant to ECOA, the FHA and the Civil  
18 Rights Act by Plaintiffs on behalf of themselves and all minority borrowers (the  
19 "Class") who entered into residential mortgage loan contracts that were financed or  
20 purchased by Defendant WACHOVIA, and who were harmed by Defendant's  
21 discriminatory conduct.

22           49. Plaintiffs sue on their own behalf, and on behalf of a class of persons  
23 under Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure.

24           50. Plaintiffs do not know the exact size of the Class or identities of the  
25 members of the Class, since that information is in the exclusive control of  
26 Defendant WACHOVIA. Plaintiffs believe that the Class includes many thousands,  
27 or tens of thousands of individuals, who are geographically dispersed throughout  
28 the United States. Therefore, the Class is so numerous that joinder of all members

1 is impracticable.

2       51. All members of the Class have been subjected to and affected by  
3 Defendant WACHOVIA's practice of assessing yield spread premiums and other  
4 discretionary fees on mortgage loans. There are questions of law and fact that are  
5 common to the Class, and that predominate over any questions affecting only  
6 individual members of the Class. These questions include, but are not limited to the  
7 following:

- 8       a. the nature and scope of Defendant WACHOVIA's policies and  
9       procedures concerning the assessment of yield spread premiums and  
10      other discretionary fees on mortgage loans it funds;
  - 11      b. whether Defendant WACHOVIA discriminated against Class  
12      Members by charging them higher interest, fees, and costs, than  
13      Defendant WACHOVIA charges similarly situated non-minority  
14      borrowers;
  - 15      c. whether Defendant WACHOVIA's intent in its discriminatory policies  
16      and procedures was racially motivated;
  - 17      d. whether Defendant WACHOVIA can articulate any legitimate non-  
18      discriminatory reason for its policies and procedures;
  - 19      e. whether Defendant WACHOVIA and its subsidiaries are creditors  
20      under the ECOA because, in the ordinary course of business, they  
21      participate in the decision of whether or not to extend credit to  
22      consumers;
  - 23      f. whether Defendant WACHOVIA's policies and procedures regarding  
24      yield spread premiums and other discretionary fees have a disparate  
25      impact on minority borrowers;
  - 26      g. whether Defendant WACHOVIA has any business justification for its  
27      policies and procedures.
- 28

- 1 h. whether there is a less discriminatory alternative to these policies and  
2 procedures;
- 3 i. whether Defendant WACHOVIA devised and deployed a scheme or  
4 common course of conduct that acted to deceive Plaintiffs and  
5 members of the Class;
- 6 j. whether the Court can enter declaratory and injunctive relief; and  
7 k. the proper measure of disgorgement or monetary relief.

8 52. Plaintiffs' claims are typical of the claims of the Class, and do not  
9 conflict with the interests of any other members of the Class in that both Plaintiffs,  
10 and the other members of the Class, were subjected to the same yield spread  
11 premiums and other discretionary fees that have disproportionately affected  
12 minority borrowers.

13 53. Plaintiffs will fairly and adequately represent the interests of the Class.  
14 Plaintiffs are committed to vigorous prosecution of the Class's claims, and have  
15 retained attorneys who have extensive experience in consumer protection and credit  
16 discrimination actions and in class actions.

17 54. Defendant WACHOVIA has acted or refused to act on grounds  
18 generally applicable to the Class, thereby making appropriate final injunctive relief  
19 or corresponding declaratory relief with respect to the class as a whole.

20 55. A class action is superior to other methods for the speedy and efficient  
21 adjudication of this controversy. A class action regarding the issues in this case  
22 does not create any problems of manageability.

23 **ACCRUAL, FRAUDULENT CONCEALMENT, CONTINUING**  
24 **VIOLATION, AND EQUITABLE TOLLING**

25 56. Plaintiffs and Class Members did not know, and could not reasonably  
26 have known, that they would receive from Defendant WACHOVIA mortgage loans  
27 with worse terms and higher costs and fees than non-minorities. Their claims did  
28 not accrue until shortly before the filing of this action.



1           57. Defendant WACHOVIA's discriminatory conduct was inherently self-  
2 concealing. Defendant WACHOVIA knew that Plaintiffs and Class Members  
3 could not determine the relationship between the terms, fees, and costs of their  
4 loans to those available to non-minorities, or to the services that WACHOVIA and  
5 its contracted mortgage brokers provided. Defendant WACHOVIA has superior  
6 knowledge about the terms, fees, and costs of its loans, and knew that the terms,  
7 fees and costs provided to minorities, unbeknownst to them, were substantially  
8 worse than the loans provided to non-minorities.

9           58. Defendant WACHOVIA has not released or provided information  
10 about its discrimination against Plaintiffs and Class Members, and has actively and  
11 fraudulently concealed its discriminatory practices.

12           59. As a result of the foregoing, Plaintiffs and Class Members in the  
13 exercise of due diligence could not have reasonably discovered the discriminatory  
14 practices, and did not do so until just recently. For the reasons alleged above, the  
15 members of the Class still do not know that they have been and continue to be  
16 injured by Defendant WACHOVIA's discriminatory conduct.

17           60. Defendant WACHOVIA's discriminatory conduct is continuing in  
18 nature, and Defendant WACHOVIA has committed discriminatory acts throughout  
19 the limitations period. Class members whose loans include higher interest rates due  
20 to WACHOVIA's discrimination continue to be harmed every time an interest  
21 payment becomes due on such loans. Other Class members have contracted with  
22 WACHOVIA, and been subject to the identical discriminatory practices, within the  
23 applicable period of limitations.

24           61. There is a substantial nexus between the acts of discrimination  
25 occurring within the limitation periods prior to filing suit, and the acts of  
26 discrimination before that time. The acts involve the same type of discrimination  
27 and are recurring, not isolated events.  
28

62. Defendant WACHOVIA specifically misled Plaintiffs and Class Members into believing that the mortgage-related terms, fees, and costs they were offered were fair, reasonable, and the same as offered to non-minorities, and took steps to conceal its fraudulent and unfair conduct.

63. The statute of limitations applicable to any claims that Plaintiffs or other Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct described herein, have been tolled as a result of Defendant WACHOVIA's fraudulent concealment. In addition, Plaintiffs and the Class did not and could not have discovered their causes of action until the time alleged below, thereby tolling any applicable statute of limitations.

# **COUNT I**

## **VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

### **(15 U.S.C. §§ 1691 - 1691f)**

64. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 63 above as if fully set forth herein.

65. Defendant WACHOVIA engages in credit transactions through its offering, granting, and purchasing of residential mortgage loans.

66. By imposing higher interest rates and other discretionary fees on residential mortgage loans to Plaintiffs and Class Members than it imposed on non-minority mortgage borrowers, Defendant WACHOVIA has discriminated against Plaintiffs and members of the Class with respect to a credit transaction on the basis of race in violation of the ECOA. 15 U.S.C. § 1691(a).

67. In addition, Defendant WACHOVIA's pricing policies and procedures (including yield spread premiums), which provide financial incentives to its mortgage brokers and correspondent lenders to make subjective decisions to increase interest rates and charge additional fees and costs, have a disparate impact on Plaintiffs and Class Members.



1 were charged to similarly situated non-minority borrowers.

2 74. Defendant WACHOVIA unlawfully discriminated against Plaintiffs  
3 and Class Members in (i) formation of contracts, (ii) making, performance,  
4 modification, and termination of contracts, (iii) the enjoyment of all benefits,  
5 privileges, terms and conditions of the contractual relationship, and/or (iv) conduct  
6 that interferes with the right to establish and enforce contract obligations.

7 75. Defendant WACHOVIA's actions violate 42 U.S.C. § 1981, as well as  
8 the rights of Plaintiffs and the Class under the Fifth, Thirteenth, and Fourteenth  
9 Amendments to the Constitution of the United States.

10 76. Plaintiffs and Class Members are entitled to injunctive and declaratory  
11 relief and damages, or make whole equitable relief as a result of Defendant  
12 WACHOVIA's discriminatory conduct.

13 77. At no time has Defendant WACHOVIA undertaken corrective action  
14 to ameliorate its racially discriminatory practices. Defendant WACHOVIA  
15 continues to reap the profits of its discriminatory practices and continues to  
16 discriminate. Defendant WACHOVIA's conduct as alleged herein was intentional,  
17 willful, wanton, reckless, malicious, outrageous, or otherwise aggravated beyond  
18 mere negligence. Defendant WACHOVIA has acted with malice and reckless  
19 indifference to the federally protected rights of Plaintiffs and members of the Class.  
20 As a result, Plaintiffs and members of the Class are entitled to punitive damages.

21 **COUNT III**

22 **RACIAL DISCRIMINATION**

23 **(42 U.S.C. § 1982)**

24 78. Plaintiffs repeat, re-allege, and incorporate the allegations contained in  
25 paragraphs 1 through 63 above as if fully set forth herein.

26 79. Section 42 U.S.C. §1982 provides that all citizens of the United States  
27 "shall have the same right, in every State and Territory, as is enjoyed by White  
28 citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal

1 property.”

2 80. Defendant WACHOVIA has discriminated against Plaintiffs and the  
 3 Class with respect to their home mortgage loans by charging Plaintiffs and the  
 4 Class higher interest rates and other discretionary fees than Defendant  
 5 WACHOVIA has charged similarly situated non-minority consumers. As a result  
 6 of Defendant WACHOVIA’s conduct, Plaintiffs and the Class have not had the  
 7 same right as Caucasians to inherit, purchase, sell, hold, and convey real property.  
 8 Defendant WACHOVIA has thereby violated 42 U.S.C. § 1982.

9 81. Defendant WACHOVIA’s violation of 42 U.S.C. § 1982 was  
 10 intentional and malicious.

11 82. As a proximate result of Defendant WACHOVIA’s violation of 42  
 12 U.S.C. § 1982, Plaintiffs and members of the Class have been injured, and are  
 13 entitled to injunctive and declaratory relief and damages, or make whole equitable  
 14 relief. In addition, Defendant WACHOVIA’s conduct as alleged herein was  
 15 intentional, willful, wanton, reckless, malicious, outrageous, or otherwise  
 16 aggravated beyond mere negligence. Defendant WACHOVIA acted with malice  
 17 and reckless indifference to the federally protected rights of Plaintiffs and members  
 18 of the Class. As a result, Plaintiffs and members of the Class are entitled to  
 19 punitive damages.

#### 20 **COUNT IV**

#### 21 **VIOLATION OF THE FAIR HOUSING ACT**

#### 22 **(42 U.S.C. §§ 3601 – 3619)**

23 83. Plaintiffs repeat, re-allege and incorporate the allegations in paragraphs  
 24 1 through 63 above as if fully set forth herein.

25 84. Mortgage lending and the providing of residential mortgage loans is a  
 26 “residential real estate-related transaction” within the meaning of the FHA. 42  
 27 U.S.C. § 3605(b).

28 ///

1           85. By imposing higher interest rates and other discretionary fees on  
2 residential mortgage loans to Plaintiffs and Class Members than it imposed on non-  
3 minority mortgage borrowers, Defendant WACHOVIA has discriminated against  
4 Plaintiffs and members of the Class concerning their ability to participate in real  
5 estate-related transactions, and in the terms and conditions of such transactions, in  
6 violation of the FHA. 42 U.S.C. § 3605(a).

7           86. In addition, Defendant WACHOVIA's pricing policies and procedures  
8 (including yield spread premiums), which provide financial incentives to its  
9 mortgage brokers and correspondent lenders to make subjective decisions to  
10 increase interest rates and charge additional fees and costs, had a disparate impact  
11 upon Plaintiffs and Class Members.

12           87. As a proximate result of Defendant WACHOVIA's violation of 42  
13 U.S.C. § 3605, Plaintiffs and members of the Class have been injured and are  
14 entitled to injunctive and declaratory relief and damages, or make whole equitable  
15 relief.

16           88. In addition, Defendant WACHOVIA's conduct as alleged herein was  
17 intentional, willful, wanton, reckless, malicious, outrageous, or otherwise  
18 aggravated beyond mere negligence. Defendant WACHOVIA acted with malice  
19 and reckless indifference to the federally protected rights of Plaintiffs and members  
20 of the Class. As a result, Plaintiffs and members of the Class are entitled to  
21 punitive damages.

22           89. Moreover, Defendant WACHOVIA continues to discriminate in  
23 violation of the FHA against members of the Class every time Defendant  
24 WACHOVIA provides a home mortgage loan as described herein. If not enjoined  
25 from such violation by the Court, Defendant WACHOVIA will continue to engage  
26 in conduct that disregards the rights of Plaintiffs and members of the Class, and  
27 cause Plaintiffs and members of the Class irreparable injury for which there is no  
28 adequate remedy at law. 42 U.S.C. § 3613(c).





1 G. A judgment or other order granting such other and further relief as the  
2 Court deems just and proper including, but not limited to, recessionary relief and  
3 reformation.

4 DATED this 27<sup>th</sup> day of September, 2007.


5 Respectfully submitted,

6 CHAVEZ & GERTLER, L.L.P.

7 BONNETT, FAIRBOURN, FRIEDMAN  
8 & BALINT, P.C.

9 LERACH, COUGHLIN, STOIA, GELLER  
10 RUDMAN & ROBBINS, LLP

11 HOUSING AND ECONOMIC RIGHTS  
12 ADVOCATES

13  
14   
15 By: Nance F. Becker

16 Attorneys for Plaintiffs  
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22  
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**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: September 27, 2007

Respectfully submitted,

CHAVEZ & GERTLER, L.L.P.

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.

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HOUSING AND ECONOMIC RIGHTS  
ADVOCATES

  
By: Nance F. Becker

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**PROOF OF SERVICE**

(C.C.P. §1013a(3))

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF MARIN                    )

I am employed in the County of Marin, State of California. I am over the age of 18 years and not a party to the within action; my business address is Chavez & Gertler LLP, 42 Miller Avenue, Mill Valley, CA 94941.

On September 27, 2007, I served the foregoing documents:

- **FIRST AMENDED CLASS ACTION COMPLAINT FOR: Violations of the Equal Credit Opportunity Act; Violations of the Fair Housing Act; Violations of the Civil Rights Act, 42 U.S.C. §1981; Violations of the Civil Rights Act, 42 U.S.C. §1982**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed Federal Express envelope addressed to each as follows:

Joyce Camp, Paralegal  
Wachovia Corporation  
301 South College Street  
Suite 4000  
Charlotte, NC 28288-0013

Beerly Enjaian  
Legal Department  
World Savings Bank  
1901 Harrison Street  
Oakland, Ca 94612

[X] **BY FEDERAL EXPRESS:** The above mentioned documents were served on the interested parties in this action by depositing them in a box or other facility regularly maintained by Federal Express, or delivering it to an authorized carrier or driver authorized by Federal Express to receive documents, in an envelope or package designated by Federal Express with delivery fees paid or provided for, addressed to the person to be served at the address shown below.

Executed on September 27, 2007, at Mill Valley, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Cate L. Coelho